



## **DEPARTMENT OF ENERGY**

### **10 CFR Part 430**

#### **EERE-2021-BT-STD-0002**

#### **RIN 1904–AF14**

### **Energy Conservation Program: Product Classes for Residential Dishwashers, Residential Clothes Washers, and Consumer Clothes Dryers**

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of proposed rulemaking and request for comment.

**SUMMARY:** On October 30, 2020 and December 16, 2020, the Department of Energy (“DOE”) published two final rules that established product classes for residential dishwashers with a cycle time for the normal cycle of 60 minutes or less, top-loading residential clothes washers and consumer clothes dryers with a cycle time of less than 30 minutes, and front-loading residential clothes washers with a cycle time of less than 45 minutes (“short-cycle product classes”). The rules resulted in amended energy conservation standards for these short cycle product classes, without determining whether the relevant statutory criteria for amending standards were met. Thus, DOE proposes to revoke the two earlier rules that improperly promulgated standards and reinstate the prior product classes and applicable standards for these covered products. DOE requests written comment on its proposal and announces a public meeting to receive comment on this notice of proposed rulemaking (“NOPR”).

**DATES:** *Meeting:* DOE will hold a webinar on September 23, 2021, from 1:00 p.m. to 4:00 p.m. See section VI, “Public Participation,” for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

*Comments:* DOE will accept comments, data, and information regarding this NOPR no later than **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov*. Follow the instructions for submitting comments for docket number EERE-2021-BT-STD-0002. Alternatively, interested persons may send an email to: *ShortCycleProductClasses2021STD0002@ee.doe.gov*. Include the docket number EERE-2021-BT-STD-0002 and/or RIN 1904-AF14 in the subject line of the message.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including the Federal eRulemaking Portal, email, postal mail, or hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing COVID-19 pandemic. DOE is currently accepting only electronic submissions at this time. If a commenter finds that this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 586-1445 to discuss the need for alternative arrangements. Once the COVID-19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

No telefacsimiles (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section VI (Public Participation) of this document.

*Docket:* The docket for this activity, which includes *Federal Register* notices, comments, and other supporting documents/materials, is available for review at [www.regulations.gov](http://www.regulations.gov). All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at [www.regulations.gov/docket/EERE-2021-BT-STD-0002](http://www.regulations.gov/docket/EERE-2021-BT-STD-0002). The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section VI for information on how to submit comments through [www.regulations.gov](http://www.regulations.gov).

#### **FOR FURTHER INFORMATION CONTACT:**

Mr. John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE-5B, 1000 Independence Avenue, SW., Washington, DC, 20585-0121. Email: [ApplianceStandardsQuestions@ee.doe.gov](mailto:ApplianceStandardsQuestions@ee.doe.gov).

Ms. Kathryn McIntosh, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue, SW., Washington, DC, 20585-0121. Telephone: (202) 586-2002. Email: [Kathryn.McIntosh@hq.doe.gov](mailto:Kathryn.McIntosh@hq.doe.gov).

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact the Appliance and Equipment Standards Program staff at (202) 287-1445 or by email: [ApplianceStandardsQuestions@ee.doe.gov](mailto:ApplianceStandardsQuestions@ee.doe.gov).

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## **I. Summary of Proposed Rulemaking**

In October and December of 2020, DOE published two final rules that established new short-cycle product classes for residential dishwashers, residential clothes washers, and consumer clothes dryers. 85 FR 68723 (Oct. 30, 2020) (“October 2020 Final Rule”); 85 FR 81359 (Dec. 16, 2020) (“December 2020 Final Rule”). While these short-cycle products had previously been subject to energy and water conservation standards, the October and December 2020 Final Rules stated that short-cycle product classes were no longer subject to any water or energy conservation standards. 85 FR 68723, 68742; 85 FR 81359, 81376. As a result, short-cycle products are currently allowed to consume unlimited amounts of energy and water.

In amending the standards for short-cycle products to allow for unlimited water and energy usage, DOE failed to consider whether the amended standards met the criteria in the Energy Policy and Conservation Act, as amended (“EPCA”),<sup>1</sup> for issuing an amended standard. Notably, among other things, DOE did not determine, as required, that the amended standards for short-cycle products were designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. 42 U.S.C. 6295(o)(2)(A). As such, DOE proposes to revoke the two earlier rules that improperly promulgated standards and to reinstate the prior product classes and applicable standards for these covered products.

## **II. Authority and Background**

### *A. Authority*

EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291-6317) Title III, Part B<sup>2</sup> of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency. These covered products include residential dishwashers, residential clothes washers, and consumer clothes dryers, the subjects of this document. 42 U.S.C. 6292(a)(6), (7), and (8), respectively.

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) the establishment of Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C.

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<sup>1</sup> All references to EPCA in this document refer to the statute as amended by the Energy Act of 2020, Public Law 116-260 (Dec. 27, 2020).

<sup>2</sup> For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, including residential dishwashers, residential clothes washers, and consumer clothes dryers. For instance, any new or amended standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. 42 U.S.C. 6295(o)(2)(A). In deciding whether a standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens by, to the greatest extent possible, considering the following seven statutory factors: (1) the economic impact of the standard on manufacturers and consumers of the products subject to the standard; (2) the savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the standard; (3) the total projected amount of energy (or as applicable, water) savings likely to result directly from imposition of the standard; (4) any lessening of the utility or the performance of the covered products likely to result from imposition of the standard; (5) the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard; (6) the need for national energy and water conservation; and (7) other factors the Secretary of Energy (“Secretary”) considers relevant. 42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII). Furthermore, the new or amended standard must result in a significant conservation of energy. 42 U.S.C. 6295(o)(3)(B).

EPCA also includes what is known as an “anti-backsliding” provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum

allowable energy use or decreases the minimum required energy efficiency of a covered product.

42 U.S.C. 6295(o)(1).

Additionally, when prescribing an energy conservation standard, EPCA requires DOE to specify a different standard level than that which applies generally to a type or class of products for any group of covered products that have the same function or intended use, if DOE determines that products within such group: (A) consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard. 42 U.S.C. 6295(q)(1). In determining whether a performance-related feature justifies such a different standard for a group of products, DOE must consider such factors as the utility to the consumer of the feature and other factors DOE deems appropriate. *Id.* Any rule prescribing such a “higher or lower standard” must include an explanation of the basis on which such higher or lower level was established. 42 U.S.C. 6295(q)(2).

### *B. Background*

As noted earlier, DOE’s October 2020 and December 2020 Final Rules amended the applicable energy and water conservation standards for residential dishwashers, residential clothes washers, and consumer clothes dryers when they established new short-cycle product classes for those products. Creation of those short-cycle classes effectively removed the energy and water conservation standards that had previously applied to those products. As discussed in greater detail below, the 2020 rulemakings failed to consider the criteria necessary for an amended standards rulemaking as required by the Energy Policy and Conservation Act, as amended, which directs DOE to consider whether the amended standards were designed to

achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. 42 U.S.C. 6295(o)(2)(A).

## 1. Residential Dishwashers

Prior to the October 2020 Final Rule, dishwashers were divided into two product classes by size: standard and compact. Standard size dishwashers had a capacity equal to or greater than eight place settings plus six serving pieces, while compact size dishwashers had a capacity less than eight place settings plus six serving pieces. 10 CFR 430.32(f)(1) (as effective October 29, 2020). Standard size dishwashers, regardless of normal cycle time,<sup>3</sup> had to use less than 307 kwh/year and 5.0 gallons per cycle, while compact dishwashers, regardless of normal cycle time, had to use less than 222 kwh/year and 3.5 gallons per cycle.

On October 30, 2020, DOE published a final rule that replaced an existing product class for dishwashers with two new product classes based on cycle time and amended the standards for such dishwashers. 85 FR 68723. DOE initiated the rulemaking in response to a petition for rulemaking submitted by the Competitive Enterprise Institute (“CEI”) in March 2018, in which CEI asserted that there was considerable consumer dissatisfaction with the dramatically longer cycle time for dishwashers under the then-current energy conservation standards. 83 FR 17768 (Apr. 24, 2018). CEI requested that DOE establish a new product class for dishwashers with a cycle time of less than one hour. *Id.* at 83 FR 17771.

In the October 2020 Final Rule, DOE stated that a product class of standard size residential dishwashers with a normal cycle of 60 minutes or less would allow manufacturers to

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<sup>3</sup> “Normal cycle” is the cycle type, including washing and drying temperature options, recommended in the manufacturer’s instructions for daily, regular, or typical use to completely wash a full load of normally soiled dishes, including the power-dry setting. 10 CFR part 430 subpart B appendix C1 (“Appendix C1”), section 1.12.



provide consumers with the option to purchase a dishwasher that maximizes the consumer utility of a short-cycle time to wash and dry dishes. 85 FR 68723, 68724. DOE also stated that a product class for which the normal cycle time is 60 minutes or less could spur manufacturer innovation to generate additional product offerings to fill the market gap that exists for these products. *Id.* at 85 FR 68726. DOE determined that, under 42 U.S.C. 6295(q), dishwashers with a normal cycle time of 60 minutes or less have a performance-related feature that other dishwashers lack and that this feature justifies a separate product class subject to a higher or lower standard than the standards currently applicable to the existing product classes of dishwashers. *Id.* As a result, DOE replaced the existing product class for standard dishwashers with two new product classes for standard size dishwashers based on normal cycle time. DOE kept the existing energy conservation standards for standard size dishwashers with a normal cycle time greater than 60 minutes at the level previously prescribed for the product class that covered all standard size dishwashers. *Id.* at 85 FR 68741. DOE also stated that standard size dishwashers with a normal cycle time of 60 minutes or less were not subject to any energy or water conservation standards, thus allowing for unlimited water and energy usage. *Id.* at 85 FR 68742. DOE stated it would consider further amending energy and water conservation standards for standard size dishwashers with a normal cycle time of 60 minutes or less in a future rulemaking. *Id.* at 85 FR 68724.

On December 29, 2020, the National Resources Defense Council (“NRDC”), Sierra Club, Consumer Federation of America, and Massachusetts Union of Public Housing Tenants petitioned the U.S. Court of Appeals for the Second Circuit to review and set aside the October 2020 Final Rule. *Natural Resources Defense Council v. U.S. Dep’t of Energy*, No. 20-4256 (2d Cir.). On the same day, the States of California, Connecticut, Illinois, Maine, Michigan, Minnesota, New Jersey, New Mexico, New York, Nevada, Oregon, Vermont, and Washington, the Commonwealth of Massachusetts, the District of Columbia, and the City of New York filed a

separate petition for review of the October 2020 Final Rule in the U.S. Court of Appeals for the Second Circuit. *California v. U.S. Dep’t of Energy*, No. 20-4285 (2d Cir.). These two cases have been consolidated in the Second Circuit and have been placed in abeyance pending DOE’s review of the October 2020 Final Rule.

Further, on March 1, 2021, the Association of Home Appliance Manufacturers (“AHAM”) petitioned DOE to reconsider the October 2020 Final Rule that established and amended standards for short-cycle residential dishwashers. “AHAM petition for reconsideration-1”; Docket EERE-2021-BT-STD-0002, No. 001 at p. 2.<sup>4 5</sup> On April 28, 2021, the NRDC, Sierra Club, the Consumer Federation of America, and the Massachusetts Union of Public Housing Tenants (“NRDC et al.”) also submitted a petition for DOE to repeal the same October 2020 Final Rule (“NRDC petition for reconsideration”).<sup>6</sup> The petition challenges the legality of the final rule, stating that the creation of the new product class violates the core requirements of EPCA. NRDC petition for reconsideration, Docket EERE-2021-BT-STD-0002, No. 003 at 2. The petition contends that addressing those defects is critical to preventing such an error from being repeated in the future.

## 2. Residential Clothes Washers and Consumer Clothes Dryers

Prior to the December 2020 Final Rule, product classes for residential clothes washers were based on clothing container capacity and axis of loading—i.e., front-loading or top-loading. 10 CFR 430.32(g)(4) (Dec. 15, 2020). And, prior to the December 2020 Final Rule, product

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<sup>4</sup> AHAM submitted its petition pursuant to the Administrative Procedure Act (“APA”), 5 U.S.C. 551 *et seq.*, which provides among other things, that “[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.” 5 U.S.C. 553(e). The AHAM petition is available in the docket to this rulemaking, EERE-2021-BT-STD-0002, at <https://www.regulations.gov>.

<sup>5</sup> A notation in this form provides a reference for information that is in the specified docket, which is available at <https://www.regulations.gov>. This notation indicates that the statement preceding the reference is included in document number 001 of that docket at page 2.

<sup>6</sup> NRDC also submitted its petition pursuant to the APA, 5 U.S.C. 553(e), to repeal the final rule. The NRDC petition is available in the docket to this rulemaking, EERE-2021-BT-STD-0002, at <https://www.regulations.gov>.

classes for consumer clothes dryers were based on fuel source (120V electric, 240V electric, or gas), venting configuration (vented or ventless), capacity, and integration with a clothes washer (combination washer-dryer). 10 CFR 430.32(h)(3) (as effective Dec. 15, 2020). Each product class was subject to a specific energy or energy and water conservation standard that applied regardless of the cycle time.

In August 2020, DOE proposed to replace existing product classes with new product classes based on cycle time for top-loading standard residential clothes washers (30 minutes or greater; less than 30 minutes), front-loading standard residential clothes washers (45 minutes or greater; less than 45 minutes), and consumer clothes dryers (30 minutes or greater; less than 30 minutes). 85 FR 49297, 49311-49312 (Aug. 13, 2020) (“August 2020 NOPR”). Unlike the dishwasher product class rulemaking, this rulemaking was not initiated in response to a petition, but instead relied on particular similarities between consumer use of dishwashers and clothes washers and clothes dryers as the basis for proposing the rulemaking. *Id.* at 85 FR 49298. Shortly thereafter, on December 16, 2020, DOE published the December 2020 Final Rule that replaced the product classes with new product classes based on cycle time and kept the existing energy conservation standards for the new product classes with longer cycle times, while declaring the short-cycle product classes are not currently subject to any energy or water conservation standards, thus allowing for unlimited water and energy usage. 85 FR 81359, 81375-81376.

On January 19, 2021, the States of California, Connecticut, Illinois, Maine, Michigan, Minnesota, New Jersey, New Mexico, New York, Nevada, Oregon, Vermont, and Washington, the Commonwealth of Massachusetts, the District of Columbia, and the City of New York filed a petition for review of the December 2020 Final Rule in the Second Circuit. *California v. U.S. Dep’t of Energy*, No. 21-108 (2d Cir.). Shortly thereafter, two other groups of petitioners filed

petitions for review of the December 2020 Final Rule. The Alliance for Water Efficiency, the U.S. Public Interest Research Group, and Environment America (collectively, “AWE”) filed a petition for review of that final rule in the Seventh Circuit on January 17, 2021, and the Sierra Club filed a petition for review of that final rule in the Ninth Circuit on February 12, 2021. *Alliance for Water Efficiency v. U.S. Dep’t of Energy*, No. 21-428 (2d Cir.); *Sierra Club v. U.S. Dep’t of Energy*, No. 21-564 (2nd Cir.). After transfer of the Seventh and Ninth Circuit petitions for review, all three cases were consolidated in the Second Circuit. In its court filings, AWE has raised the following issues with the December 2020 Final Rule: that DOE lacks authority to exempt a product group from water conservation standards; DOE failed to comply with the requirements for a section 325(q) rule; DOE violated EPCA’s anti-backsliding provision; and DOE violated the National Environmental Policy Act. Briefing on the merits is currently stayed through October 1, 2021, while DOE reviews the December 2020 Final Rule.

On April 2, 2021, AHAM further petitioned DOE to reconsider the December 2020 Final Rule that established and amended standards for short-cycle residential clothes washers and dryers. “AHAM petition for reconsideration-2”; Docket EERE-2021-BT-STD-0002, No. 002 at 2.<sup>7</sup> AHAM argued that the short-cycle product classes were neither justified nor needed for three reasons. First, AHAM stated that many clothes washers and clothes dryers already offer cycles that are within the December 2020 Final Rule’s cycle time goal and that meet the existing standards. *Id.* at 7-8, 12. Second, AHAM argued that the cycle times in the December 2020 Final Rule were arbitrary because DOE lacked the data necessary to demonstrate a consumer desire for the times adopted. *Id.* at 13. Third, AHAM specified that establishing the separate product classes would likely cause negative, unintended consequences such as strand manufacturer investments; create new regulation; introduce manufacturer uncertainty until

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<sup>7</sup> As with its first petition, AHAM submitted its second petition pursuant to the APA. The AHAM petition for reconsideration-2 is available in the docket to this rulemaking, EERE-2021-BT-STD-0002, at <https://www.regulations.gov>.

standards for the new product classes are developed; increase test burden; and potentially cause disharmony in North America for clothes washer and clothes dryer standards. *Id.* at 8-9, 16-18. For these reasons, AHAM requested that DOE withdraw the December 2020 Final Rule. *Id.* at 19.

Like its petition regarding the short-cycle product class for residential dishwashers, AHAM requested that, while DOE considers its petition, DOE stay the effectiveness of the final rule as it allows for unlimited energy and water use by these products and issue a statement to the market that these new product classes cannot reliably be used as the basis for new products. *Id.* at 2.

### **III. Discussion**

In issuing the October 2020 and December 2020 Final Rules, DOE relied on its authority under EPCA to establish product classes with higher or lower levels of energy use or efficiency when prescribing, by rule, an energy conservation standard. 42 U.S.C. 6295(q). In so doing, the October 2020 and December 2020 Final Rules also amended the energy conservation standards for short-cycle products by stating they were no longer subject to energy and water conservation standards. 85 FR 68733; 85 FR 81366. But the 2020 Final Rules did not address any of EPCA's requirements for amending an energy conservation standard, including an analysis of whether the amended standards are designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. 42 U.S.C. 6295(o)(2)(A); *see* 85 FR 81361. DOE also did not, among other things, adequately consider whether the amended standards violated EPCA's prohibition against prescribing an amended standard that increases the maximum allowable energy use or decreases the energy efficiency of a covered product. 42

U.S.C. 6295(o)(1). Because the October 2020 and December 2020 Final Rules were contrary to EPCA, DOE proposes to revoke them through this rulemaking.

As an initial matter, as support for establishing product classes without associated energy conservation standards, the October 2020 and December 2020 Final Rules asserted that those rules were simply deferring the issuance of new conservation standards. 85 FR 68723, 68733; 85 FR 81359, 81368. EPCA does not, however, allow DOE to simply defer the establishment of new energy conservation standards for regulated products or equipment that already have energy conservation standards. Even if EPCA authorized deferrals in some instances, any creation of the new product classes here would have needed to follow the requirements of 42 U.S.C. 6295(q), which frames the development of a product class within the context of an energy conservation standard rulemaking. But the October 2020 and December 2020 Final Rules did not develop the new product classes in the context of an energy conservation standard rulemaking. Instead, by stating that the new product classes were not subject to any energy conservation standards without following 42 U.S.C. 6295(q), the October 2020 and December 2020 Final Rules were an amendment in violation of EPCA.

EPCA requires, as stated previously, that an amended conservation standard must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. 42 U.S.C. 6295(o)(2)(A). The plain meaning of the statutory term “amend” is to “alter formally by adding, deleting or rephrasing.” (American Heritage Dictionary for the English Language 42 (1981)). As explained above, the 2020 Final Rules altered the existing energy and water conservation standards for the short cycle products by removing the standards applicable to those products to allow for unlimited energy and water use. This activity clearly fits within this scope of the definition of “amend” because DOE deleted the applicable standards altogether.

Even assuming that EPCA were ambiguous in this regard, DOE's position—that the 2020 Final Rules improperly amended the energy and water conservation standards for the short-cycle products—is the better understanding of the statute. Prior to the 2020 Final Rules, the short-cycle products belonged to product classes subject to specific energy and/or water conservation standards. The 2020 Final Rules separated the products that met the classification for the new short-cycle product classes from their regulated counterparts to establish product classes not subject to any standard and that could operate with unlimited energy and water use. Those products now do not have any applicable standard, which effectively amended the prior energy or water conservation standards for those products to zero. But the 2020 Final Rules did so without considering any of EPCA's requirements for such action.

Relatedly, the October 2020 and December 2020 Final Rules inaccurately cited DOE's 2007 distribution transformer and 2009 beverage vending machine ("BVM") energy conservation standards rulemakings as support. 85 FR 68723, 68733; 85 FR 81361, 81368. In the 2007 distribution transformers rulemaking, DOE established a separate equipment class for underground mining distribution transformers without establishing associated energy conservation standards. 72 FR 58190 (Oct. 12, 2007). Similarly, in the 2009 BVM rulemaking, DOE established a separate equipment class for combination BVMs without establishing associated energy conservation standards. 74 FR 44914 (Aug. 31, 2009). But the October 2020 and December 2020 Final Rules failed to note the key distinction between these examples and the short-cycle product class rulemakings. Both the 2007 and 2009 rulemakings were the first instance of energy conservation standards being promulgated for distribution transformers and BVMs. As such, not setting standards for those equipment classes simply maintained the status quo—that is, underground mining distribution transformers and combination BVMs were not subject to energy use or efficiency restrictions either before or after those rulemakings. As a

result, DOE was not required to satisfy any of the criteria in EPCA for amending a standard for these equipment classes.

In contrast, short-cycle residential dishwashers, residential clothes washers, and consumer clothes dryers were all subject to energy conservation standards prior to the October 2020 and December 2020 Final Rules. By stating that short-cycle products were no longer subject to energy or water conservation standards, the October 2020 and December 2020 Final Rules changed the status quo in a direction that would allow for unlimited energy and water use by these short-cycle products. Thus, DOE was required to satisfy the requirements in EPCA for issuing an amended standard.

In addition, DOE has made a policy judgment that EPCA's express purposes of energy and water conservation (42 U.S.C. 6201(4), (5), (8)) would be thwarted if DOE could avoid restrictions on amending existing standards by nominally characterizing a regulatory change in the energy conservation standards applicable to a covered product as something other than an amendment. The October 2020 and December 2020 Final Rules contravened EPCA by failing to consider these criteria when they amended the existing standards for short-cycle products in the 2020 Final Rules.

This review is also consistent with the direction provided in Executive Order 13990 of January 20, 2021, "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis." 86 FR 7037 (Jan. 25, 2021). While E.O. 13990 triggered the Department's re-evaluation, DOE is relying on the analysis presented in this NOPR, based upon EPCA, to re-examine the October and December 2020 Final Rules.

#### **IV. Conclusion**



After careful consideration, DOE proposes to revoke the October 2020 and December 2020 Final Rules that improperly amended standards and to reinstate the prior product classes and applicable standards for these covered products. DOE acknowledges that these rules will remain in effect while the Department considers whether to revoke the earlier rulemakings through notice and comment.

## **V. Procedural Issues and Regulatory Review**

### *A. Review Under Executive Orders 12866*

The Office of Information and Regulatory Affairs (“OIRA”) in the Office of Management and Budget (“OMB”) has waived review of this rule pursuant to Executive Order (“E.O.”) 12866, “Regulatory Planning and Review.”

### *B. Review Under the Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (“IRFA”) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, “Proper Consideration of Small Entities in Agency Rulemaking,” 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel’s

website (<https://energy.gov/gc/office-general-counsel>). DOE has prepared the following IRFA for the products that are the subject of this rulemaking.

DOE reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE has initially concluded that this rule, if made final, would not have a significant impact on a substantial number of small entities. The factual basis for this determination is as follows:

The Small Business Administration (“SBA”) considers a business entity to be a small business, if, together with its affiliates, it employs less than a threshold number of workers or earns less than the average annual receipts specified in 13 CFR part 121. The threshold values set forth in these regulations use size standards and codes established by the North American Industry Classification System (“NAICS”) that are available at <https://www.sba.gov/document/support--tablesize-standards>. The threshold number for NAICS classification code 335220, “Major Household Appliance Manufacturing,” which includes residential dishwasher, residential clothes washer, and consumer clothes dryer manufacturers, is 1,500 employees.

Most of the companies that manufacture residential dishwashers are large multinational corporations. Most of the manufacturers supplying residential clothes washers and consumer clothes dryers into the United States are large multinational corporations. DOE collected data from DOE’s compliance certification database<sup>8</sup> to identify potential manufacturers of residential dishwashers, residential clothes washers, and consumer clothes dryers. DOE then consulted publicly available data, such as Dun and Bradstreet, to determine whether they meet the SBA’s

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<sup>8</sup> <https://www.regulations.doe.gov/certificationdata>.

definition of a “small business manufacturer” and have their manufacturing facilities located within the United States.

Based on this analysis, DOE identified two manufacturers of residential dishwashers that are potential small businesses, but initially determined that this proposed rule would not impose any compliance or other requirements on any manufacturers of residential dishwashers, including small businesses. This rulemaking would eliminate the separate product class for residential dishwashers with a “normal” cycle of 60 minutes or less from washing through drying as described in the preamble. As discussed, DOE did not identify any residential dishwashers on the market—let alone any manufactured by small businesses—that offer a normal cycle of less than 60 minutes from washing through drying.

DOE did not identify any small businesses that manufacture residential clothes washers or consumer clothes dryers.

As a result, DOE certifies that the proposed rule would not have a significant impact on a substantial number of small entities. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

### *C. Review Under the Paperwork Reduction Act of 1995*

Manufacturers of covered products/equipment, such as residential dishwashers, residential clothes washers, and consumer clothes dryers, must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for residential dishwashers, residential clothes washers, and consumer clothes dryers, including any

amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including residential dishwashers, residential clothes washers, and consumer clothes dryers. 76 FR 12422 (Mar. 7, 2011); 80 FR 5099 (Jan. 30, 2015). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (“PRA”). This requirement has been approved by OMB under OMB control number 1910-1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

#### *D. Review Under the National Environmental Policy Act of 1969*

DOE is analyzing this proposed regulation in accordance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) (“NEPA”) and DOE’s NEPA implementing regulations (10 CFR part 1021). DOE’s regulations include a categorical exclusion for rulemakings interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended. 10 CFR part 1021, subpart D, appendix A5. DOE anticipates that this rulemaking qualifies for categorical exclusion A5 because it is an interpretive rulemaking that does not change the environmental effect of the rule

and otherwise meets the requirements for application of a categorical exclusion. See 10 CFR 1021.410. DOE will complete its NEPA review before issuing the final rule.

#### *E. Review Under Executive Order 13132*

E.O. 13132, “Federalism,” 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has tentatively determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. 42 U.S.C. 6297. No further action is required by Executive Order 13132.

#### *F. Review Under Executive Order 12988*

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, “Civil Justice Reform,” imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and

ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of E.O. 12988.

#### *G. Review Under the Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (“UMRA”) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104-4, section 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. 2 U.S.C. 1532(a), (b). The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed “significant intergovernmental mandate,” and requires an agency

plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at [https://energy.gov/sites/prod/files/gcprod/documents/umra\\_97.pdf](https://energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf).

This proposed rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditures of \$100 million or more in any one year, so these requirements under the Unfunded Mandates Reform Act do not apply.

#### *H. Review Under the Treasury and General Government Appropriations Act, 1999*

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Public Law 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

#### *I. Review Under Executive Order 12630*

Pursuant to E.O. 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (Mar. 15, 1988), DOE has determined that this proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

#### *J. Review Under the Treasury and General Government Appropriations Act, 2001*

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M-19-15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at <https://www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf>. DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

#### *K. Review Under Executive Order 13211*

E.O. 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.



This proposed rule, which would eliminate certain product classes for residential dishwashers, residential clothes washers, and consumer clothes dryers would not have a significant adverse effect on the supply, distribution, or use of energy and, therefore, is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects on this proposed rule.

## **VI. Public Participation**

### *A. Participation in the Webinar*

The time and date the webinar meeting are listed in the **DATES** section at the beginning of this document. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: [https://www1.eere.energy.gov/buildings/appliance\\_standards/standards.aspx?productid=38&action=viewlive](https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=38&action=viewlive). Participants are responsible for ensuring their systems are compatible with the webinar software.

### *B. Procedure for Submitting Prepared General Statements for Distribution*

Any person who has an interest in the topics addressed in this NOPR, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the webinar. Such persons may submit requests to speak by email to [ApplianceStandardsQuestions@ee.doe.gov](mailto:ApplianceStandardsQuestions@ee.doe.gov). Persons who wish to speak should include with their request a computer file in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

Persons requesting to speak should briefly describe the nature of their interest in this rulemaking and provide a telephone number for contact. DOE requests persons selected to make an oral presentation to submit an advance copy of their statements at least two weeks before the webinar. At its discretion, DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Office. As necessary, requests to give an oral presentation should ask for such alternative arrangements.

### *C. Conduct of the Webinar*

DOE will designate a DOE official to preside at the webinar/public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the webinar. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. antitrust laws. After the webinar and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the rulemaking.

The webinar will be conducted in an informal, conference style. DOE will present summaries of comments received before the webinar, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the webinar/public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the webinar.

A transcript of the webinar will be included in the docket, which can be viewed as described in the Docket section at the beginning of this NOPR. In addition, any person may buy a copy of the transcript from the transcribing reporter.

#### *D. Submission of Comments*

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

*Submitting comments via <https://www.regulations.gov>.* The <https://www.regulations.gov> webpage will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot

read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to <https://www.regulations.gov> information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (“CBI”)). Comments submitted through <https://www.regulations.gov> cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through <https://www.regulations.gov> before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that <https://www.regulations.gov> provides after you have successfully uploaded your comment.

*Submitting comments via email.* Comments and documents submitted via email will also be posted to <https://www.regulations.gov>. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names,

email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

*Campaign form letters.* Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

*Confidential Business Information.* Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the document marked "confidential" including all the information believed to be confidential, and one copy of the document marked "non-confidential" with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

## **VII. Approval of the Office of the Secretary**

The Secretary of Energy has approved publication of this notice of proposed rulemaking.

### **List of Subjects in 10 CFR Part 430**

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

### **Signing Authority**

This document of the Department of Energy was signed on July 30, 2021, by Dr. Kathleen B. Hogan, Acting Under Secretary for Energy and Science, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the *Federal Register*.

Signed in Washington, DC, on August 3, 2021

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Treena V. Garrett  
Federal Register Liaison Officer,  
U.S. Department of Energy

For the reasons set forth in the preamble, DOE proposes to amend part 430 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations, as set forth below:

## **PART 430 - ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS**

1. The authority citation for part 430 continues to read as follows:

**Authority:** 42 U.S.C. 6291-6309; 28 U.S.C. 2461 note.

2. Section 430.32 is amended by:

- a. Removing paragraph (f)(1)(iii); and
- b. Revising paragraphs (g)(4) and (h)(3).

The revisions read as follows:

### **§430.32 Energy and water conservation standards and their compliance dates.**

\* \* \* \* \*

(g) \* \* \*

(4) Clothes washers manufactured on or after January 1, 2018, shall have an Integrated Modified Energy Factor no less than, and an Integrated Water Factor no greater than:

<b>Product class</b>	<b>Integrated modified energy factor (cu.ft./kWh/cycle)</b>	<b>Integrated water factor (gal/cycle/cu.ft.)</b>
(i) Top-loading, Compact (less than 1.6 ft <sup>3</sup> capacity)	1.15	12.0
(ii) Top-loading, Standard (1.6 ft <sup>3</sup> or greater capacity)	1.57	6.5
(iii) Front-loading, Compact (less than 1.6 ft <sup>3</sup> capacity)	1.13	8.3
(iv) Front-loading, Standard	1.84	4.7



(1.6 ft <sup>3</sup> or greater capacity)		
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(h) \* \* \*

(3) Clothes dryers manufactured on or after January 1, 2015, shall have a combined energy factor no less than:

<b>Product class</b>	<b>Combined energy factor (lbs/kWh)</b>
(i) Vented Electric, Standard (4.4 ft <sup>3</sup> or greater capacity)	3.73
(ii) Vented Electric, Compact (120V) (less than 4.4 ft <sup>3</sup> capacity)	3.61
(iii) Vented Electric, Compact (240V) (less than 4.4 ft <sup>3</sup> capacity)	3.27
(iv) Vented Gas	3.30
(v) Ventless Electric, Compact (240V) (less than 4.4 ft <sup>3</sup> capacity)	2.55
(vi) Ventless Electric, Combination Washer-Dryer	2.08

\* \* \* \* \*